HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII, Rule 32(2) (b)

Description of the case.

A.O. No. 367 of 2004

Jogendra Singh & another — Appellant

Versus

The New India Assurance co. & others — Respondents

Approved for reporting.

_____

Not approved for reporting

Date of decision 26.09.2006

Initial of Judge

HIGH COURT OF UTTRANCHAL AT NAINITAL

Appeal from Order No. 367 of 2004

1. Jogender Singh s/o Bhagat Singh R/o Village Pratappur, Khatima (U.S. Nagar)
2. Smt. Jaswant Kaur w/o Jogender Singh, Village Pratappur Khatima (U.S. Nagar) At present residing at Avas Vikas, Bhotia Parao, Haldwani

..... Appellants

versus

1. M/S The New India Assurance Company, Henley House, IInd Floor, J.N. Heredia Marg, Ballard Estate, Mumbai through Divisional Manager, Opp. Sessions Court, Haldwani (Nainital
2. Mr. Prahalad ramchandra Ingle s/o Sri Ram Chandra Ingle, owner of vehicle No. KA-22B-2798, R/o 312 Brahm Nivas S.P.M. road, Begum, Karnataka

..... Respondents

Sri Z.U. Siddiqui, Advocate for the Appellants
Sri M.K. Goel , Advocate for respondent no. 1

Dated: September 26, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble Rajesh Tandon, J.

Hon. Rajesh Tandon, J.

1) This appeal is against the Award dated 3.8.2004, passed by the Motor Accident Claims Tribunal, Nainital for enhancement of the amount of award.

2) The claimants appellants preferred a claim petition under section 166 of the Motor Vehicles Act, for the grant of compensation on account of the death of Sri Raju @ Sukhvinder @ Lakhvinder in a motor vehicle accident. According to the claimants on the fateful day on 25.4.2000 at 5.30 AM the

deceased parked his tanker No. MH 04-C 2035 in front of Surya Parking Dhaba on Mumbai – Pune Road, P.S. Vadgaon. A truck No. KA/22-B-2798 came from the opposite side from the Mumbai, which was being driven rashly and negligently and dashed the tanker of the deceased. The deceased was sitting in the tanker; he sustained fatal injuries and died instantaneously. The conductor of the truck also sustained injuries in the accident. According to the complainants at the time of accident the deceased was 26 years of age and he was earning Rs.6,000/- per month.

3) The respondent no. 1, the New India Assurance Co. filed written statement and submitted that the driver of the truck No. KA-22 B/2798 and driver of truck No. MH 04-C/2035 was not made party and their insurance companies were also not made parties to the claim petition. The compensation claimed is highly excessive. Respondent no. 2 did not file any written statement before the Claims Tribunal.

5) The claimants examined P.W.1 Jogendra Singh and P.W.2 Jeet Singh and have filed certified copy of the F.I.R., charge sheet and post mortem report.

5) On the basis of the evidence adduced by the claimants, the Claims Tribunal has held that the accident had taken place on 25.4.2000 at 5:30 PM on Mumbai- Pune Road, P.S. Vadgaon in which the deceased Raju sustained injuries and he died on the spot.

6) So far as the compensation is concerned the Tribunal has recorded finding that at the time of accident the age of the deceased was 28 years. There is no documentary proof regarding the monthly income of the deceased. P.W.1 Jogendra Singh has stated that the deceased used to bring Rs.25000/ to

Rs.30,000/- but he has not stated the monthly income of the deceased. The Claims Tribunal held the annual income of the deceased at Rs.15,000/- on the basis of notional income. After deducting 1/3 of the amount for self expenses of the deceased if he would have been alive, the annual dependency of the claimants on the income of deceased was held to be Rs.10,000/-
. Considering the age of the deceased a multiplier of 17 was taken and thus the amount of compensation was calculated as Rs.1,70,000/-. A sum of Rs.5,000/- was awarded towards consortium. Thus a total sum of Rs.1,75,000/- was awarded to the claimants along with pendent lite and future interest at the rate of 9% per annum

7) The claimants have filed the present appeal under Section 173 of the Motor Vehicles Act, for enhancement of the amount of compensation. Counsel for the appellants Sri Z. U. Siddiqui has submitted that the income of the deceased has wrongly been calculated to the extent of Rs.15,000/- per annum. He has further submitted that the selection of multiplier of 17 was also not justified according to the age of the deceased and it should be at least 18.

8) After giving thoughtful consideration of the submissions of the appellants, we are of the opinion that the assessment of the income of the deceased by the Tribunal at Rs.15,000/- per annum on the basis of the notional income requires reconsideration. The notional income of Rs.15,000/- per annum in the Second Schedule under section 163-A of the Motor Vehicles Act was prescribed in the year 1994. The accident in the present case took place in the year 2000. If the depreciation in the purchase value of the rupee is taken into consideration, the notional income of Rs.15,000/- per annum,

in the year 2000, would come to Rs.30,000/- per annum. Deceased Raju was aged 28 years at the time of accident. He was truck –driver as such and he could have easily earned a sum of Rs.3,000/- per month. We, therefore, propose to re-compute the compensation taking the income of the deceased at Rs.36,000/- per annum. After deducting 1/3 amount i.e. Rs.12,000/- for his own expenses the annual dependency of the claimants on the income of the deceased comes to Rs.24,000/-.

9) In the present case the claimants are father and mother of the deceased. The Apex court in the case of **Municipal Corporation of Greater Bombay vs. Laxman Iyer and another, (2003) 8 SCC 731,** has held that, where the claimants are parents of the deceased, the multiplier should not be more than 10.

10) We deem it necessary to reproduce paragraph 12 of the Apex Court judgment in that case:

"12. *Keeping in view the observations made by this Court in various cases, several other factors need to be taken note of. The deceased was unmarried. The contribution to the parents who had their separate earnings being employed and educated has relevance. The possibility of reduction in contribution once a person gets married is a reality. The compensation is relatable to the loss of contribution or the pecuniary benefits. The multiplier adopted by the Tribunal and confirmed by the High Court is certainly on the higher side. Considering the age of the claimants, it can never exceed 10 even by the most liberal standards. Worked out on that basis the amount comes to Rs. 3.6 lakhs at the monthly expected income fixed by the Tribunal and confirmed by the High Court. Looking into the nature of the contributory negligence of the deceased after*

making an appropriate deduction which can reasonably be fixed at 25%, the compensation amount payable by the Corporation can be fixed at rupees three lakhs including the amount awarded by the Tribunal and confirmed by the High Court for loss of expectation of life. Interest at the rate as awarded by the High Court is maintained from the date of application for compensation."

11) In the present case the age of the father of the deceased is 54 years and the age of his mother is 50 years. The father of the deceased Joginder Singh when appeared in the witness box as P.W.1 has stated his profession as farmer. Thus the claimants were doing agriculture and the deceased was also giving them some money for their maintenance. Thus even considering the age of the claimants a multiplier of 10 would be just and proper. Thus by multiplying the amount of annual dependency of Rs.24,000/- with 10 the amount of compensation comes to Rs.2,40,000/-. Apart from that the claimants are also entitled to get Rs.2,000/- for the last rites of the deceased and Rs.2,500/- for loss of estate. Thus the claimants are entitled to get Rs.2,40,000 + 2,000 + 2,500 = Rs.2,44,500/- as compensation.

12) In a motor accident claim case, what is important is that the compensation to be awarded by the Tribunal should be just and proper compensation after taking into account all facts and circumstances of the case. The Apex Court, in the case of **T.N. State Transport Corpn. Ltd. vs. S. Rajapriya and others, (2005) 6 Supreme Court Cases 236,** has observed as under:

"8. *The assessment of damages to compensate the dependants is beset with difficulties because from the nature of things, it has to take into account many imponderables e.g. the life expectancy of the deceased and the dependants, the amount that the deceased would have earned during the remainder of his life, the amount that he would have contributed to the dependants during that period, the chances that the deceased may not have lived or the dependants may not live up to the estimated remaining period of their life expectancy, the chances that the deceased might have got better employment or income or might have lost his employment or income together.*

9. *The manner of arriving at the damages is to ascertain the net income of the deceased available for the support of himself and his dependants, and to deduct therefrom such part of his income as the deceased was accustomed to spend upon himself, as regards both self-maintenance and pleasure, and to ascertain what part of his net income the deceased was accustomed to spend for the benefit of the dependants. Then that should be capitalised by multiplying it by a figure representing the proper number of year's purchase.*

10. *Much of the calculation necessarily remains in the realm of hypothesis "and in that region arithmetic is a good servant but a bad master" since there are so often many imponderables. In every case "it is the overall picture that matters", and the court must try to assess as best as it can the loss suffered".*

13) Thus seen from any angle, the compensation of Rs.2,64,500/- appears to be just and proper compensation in the case.

14) In view of above, the appeal filed by the claimants against the award-dated 25.4.2000 is allowed in part. The compensation of Rs.1,75,000/- awarded by the Tribunal is modified to Rs.2,44,500/- The enhanced amount shall carry interest @ per annum from the date of the claim petition.

16) No order as to costs.

(Rajesh Tandon, J.) **(Rajeev Gupta, C.J.)**

Dated: September 26,2006
*Dhyani